

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:) WT DOCKET No.: 02-28
ALEE CELLULAR COMMUNICATIONS) File No.: 11025-CL-P672-A-89
For Authorization To Construct)
Nonwireless Cellular System)
in Texas RSA 21 Market 672A)

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Before the
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in Texas RSA 21 Market 672A)

FCC Headquarters
455 12th Street, S.W.
Washington, District of Columbia

Wednesday,
October 23, 2002

The parties met, pursuant to the notice of the
Commission, at 9:00 a.m.

BEFORE: THE HONORABLE ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

On behalf of Applicant:

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C O N T E N T S

VOIR

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
Terry H. Jones		234	304		
			359		

E X H I B I T S

<u>EXHIBITS :</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
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1 P R O C E E D I N G S

2 (9:00 a.m.)

3 JUDGE STEINBERG: Okay, Mr. DeJesus, you were
4 cross-examining so if you would --

5 MR. HILL: Your Honor, I'd just like to announce
6 on the record that I provided for the Court Reporter Alee
7 Exhibit 1 as amended.

8 JUDGE STEINBERG: Thank you. Okay
9 Whereupon,

10 TERRY H. JONES

11 having been previously sworn, was called as a
12 witness and was examined and testified further:

13 CROSS EXAMINATION

14 BY MR. DeJESUS:

15 Q Good morning again, Mr. Jones.

16 A Good morning, sir

17 Q Now just resuming where we left off yesterday.

18 A Mm-hmm.

19 Q What type of practice do you have?

20 A I'm a CPA, certified public accountant, practicing
21 in Pennsylvania.

22 Q And how would you characterize your practice?

23 A Small firm.

24 Q Lots of paperwork?

25 A Pardon me?

Q Lots of paperwork? Lots of paperwork?

2 A No more than the standard accounting firm, yes.

3 Q Do you work primarily for individuals,
4 corporations?

5 A I service individuals, corporations, partnerships,
6 most entities.

7 Q Okay. And I would assume a lot of your work
8 entails analytical review of the Tax Code and things like
9 that?

10 A Yes.

11 Q And, therefore, there's some degree of attention
12 to detail with reference to Tax Codes, making sure you get
13 the zeros in the right columns and the numbers in the right
14 columns --

15 A Yeah

16 Q -- and things like that?

17 A The zeros and the decimal places are always
18 extremely important, yes

19 Q Okay. So it's fair to say you have some level of
20 financial expertise?

21 A Within my area of concentration, yes.

22 Q Okay. Have you had occasion to interpret the Tax
23 Code as you review it or prepare your taxes?

24 A Normally the Tax Code is interpreted by one of the
25 publications that I receive, be it CCH or **RIA**.

1 Q What's CCH?

2 A Commerce Clearinghouse.

3 Q Okay. RIH is?

4 A RIA.

5 Q RIA.

6 A Research Institute of America.

7 Q Do you have any other interests in licenses other
8 than Alee?

9 A I'm hesitating just to make sure that I am
10 correct. I don't believe that I have any other current
11 interests right now.

12 Q Okay. Did you have an interest?

13 A I assume we mean FCC licenses?

14 Q Yes.

15 A Okay. Did I? Yes.

16 Q And what were those?

17 A Once again I'm reminiscing but I w nv lved in
18 the license for Hagerstown, Maryland and I think Cumberland,
19 Maryland.

20 Q And what were the results of those licenses?

21 JUDGE STEINBERG: Was that two different licenses
22 or is that one market, Hagerstown?

23 THE WITNESS: Two different licenses, sir.

24 What was the result of those licenses?

25 //

1 BY MR. DeJESUS:

2 Q Yes.

3 A I was a minority partner or shareholder, I don't
4 recall the exact structure at the time, in those licenses as
5 a result of the lottery process.

6 Q And what happened? Obviously, you no longer have
7 an interest?

8 A No. Those licenses the majority partners of each
9 of those licenses decided to dispose of them so I no longer
10 have an interest in either of those.

11 Q Okay. So were you bought out or were you paid
12 or --

13 A The organization was bought out when the majority
14 partner decided to dispose of it.

15 Q Okay. And, obviously, you received a sum of money
16 for your investment?

17 A Yes, sir.

18 Q Okay. Well, when was that partnership formed?

19 A I don't know if it was a partnership or a
20 corporation. I believe it was a partnership and --

21 Q Well, you said you were a minority shareholder.

22 A A minority partner and minority shareholder.

23 Q Okay.

24 A Okay.

25 Q So the shareholder might have been a misstatement?

1 A I don't recall the actual structure --

2 Q Okay.

3 A -- of the organization.

4 Q Okay.

5 A I was a minority, minority, minority owner, some
6 might say minuscule. When they were established it was as a
7 result of the re-lottering that took place of that location,
8 those locations, which I believe happened I'm going to say
9 mid-'89s.

10 Q Okay. Now just turning aside to another question,
11 when was the Alee partnership formed?

12 A The Alee partnership was created I believe on or
13 about June of 1988.

14 Q '88. And when did you become part of the
15 Executive Committee?

16 A I became a member of the Executive Committee as
17 the result of our first meeting which took place in December
18 of '8.

19 Q Okay. I think you testified yesterday that:
20 sometime in January of 1990 the Executive Committee ousted
21 both Mr. Franklin and Mr. Kane, is that correct? Or at
22 least by that time --

23 A In January?

24 Q -- both of them had been ousted.

25 JUDGE STEINBERG: Well, let's just -- let's not

1 make a compound question --

2 MR. DeJESUS: Okay.

3 JUDGE STEINBERG: -- because the answer is
4 meaningless.

5 MR. DeJESUS: Okay.

6 BY MR. DeJESUS:

7 Q Now as of January 1990 --

8 A Yes, sir?

9 Q -- was Mr. Kane on board?

10 A I believe he was on board as a manager of the
11 partnership until we terminated him at that meeting.

12 Q Okay. And that would have been the meeting of?

13 A Of January of 1990.

14 Q Okay. And I also assume that Mr. Franklin had
15 also been terminated sometime prior to that, correct?

16 A I don't recall the exact date of his termination
17 but it would have been at that time or earlier.

18 Q Okay. Now when did you become part of the -- when
19 did you become a managing partner?

20 MR. HILL: But we were assuming that he was ever
21 managing partner.

22 MR. DeJESUS: Okay. Let me --

23 JUDGE STEINBERG: We haven't laid -- there's no
24 foundation --

25 MR. DeJESUS: Okay.

1 JUDGE STEINBERG: -- that he ever was managing
2 partner.

3 MR. DeJESUS: Okay.

4 BY MR. DeJESUS:

5 Q Let me ask you a question. Did there come a time
6 that you became managing partner?

7 A I would not classify myself as a managing partner.

8 Q Okay.

9 A I'd classify myself as a member of the Executive
10 committee.

11 Q Okay. Now as a member of the Executive Committee
12 what are your duties and responsibilities?

13 A The Executive Committee manages the partnership
14 and the day-to-day affairs of the partnership at the
15 direction of the partners.

16 Q Okay.

17 A I just execute.

18 Q Okay. And, specifically, what are your duties and
19 responsibilities?

20 A My duties in specific is the financial and
21 operations area of the partnership. I'm also involved to a
22 great extent on all documentation, at least from a copied
23 and/or reviewed and discussed.

24 Q Okay. And I think you -- now when you mentioned
25 responsible for documentation what documentation are we

1 referring to?

2 A If there is a matter that needs to be filed or
3 something that would require a signature of the partnership.
4 It is the Executive Committee that tends to review
5 everything as a whole whenever possible, which is in the
6 majority of the cases, and we normally review it, discuss it
7 and authorize, normally one of us signs it, one of us is
8 usually available.

9 Q Okay. Have you had occasion to draft languages,
10 the language, for any of the documents?

11 A Did I draft language?

12 Q Yeah.

13 A If anything we negotiated language where there was
14 negotiations available --

15 Q Okay.

16 A -- okay, for services or something of that nature,
17 yes.

18 Q Okay. And that would also include the management
19 agreement that you entered into originally?

20 A I was involved in the management agreement, some
21 of that initially, made suggestions for making changes to
22 it. The majority of that negotiations was done and I was
23 not actively involved in the direct negotiations on that
24 but, rather, as the review process.

25 Q Who was?

1 A I don't recall whether that was Mr. Burnstein or
2 Ms. Clark.

3 Q But it **was** one or the other?

4 A I would think so, yes. I don't specifically
5 recall.

6 Q We'll come back to the management agreement. I
7 just have a few other questions to ask, several other
8 questions to ask you. When was the -- you mentioned the
9 Executive Committee and I believe you said that in January
10 of 1990 the current people who were there, yourself, Mary Jo
11 Clark and Mr. Bernstein, became the managers of Alee,
12 correct?

13 A It's Becky Jo Clark and the three of us were
14 elected to continue to serve on the Executive Committee.

15 Q Okay. And who elected you, sir?

16 A The partners.

17 Q Okay. And have there been any changes at all to
18 the Executive Committee since January of 1990?

19 A We have been reelected periodically to, in turns,
20 continue to serve in that capacity. For a period of time
21 Joel Bunis was a member of the Executive Committee. I don't
22 recall the specific dates.

23 Q How many hours would *you* say *you* devote to your
24 work with Alee?

25 A It varies depending upon the transactions that are

happening at the time.

2 Q Okay. Now I show you what's been marked as
3 Enforcement Bureau Exhibit 27. I'll ask you if you can
4 identify what this is?

5 JUDGE STEINBERG: There's nothing that's been
6 marked as 27. So you're going to have to identify it

7 MR. DeJESUS: I'm providing copies to everyone.

8 (Pause.)

9 JUDGE STEINBERG: You're going to have to put a
10 number on every page

11 MR. DeJESUS: Oh, there's a number at the bottom,
12 Your Honor.

13 JUDGE STEINBERG: Right. That's your exhibit
14 number.

15 MR. DeJESUS: Yes.

16 JUDGE STEINBERG: Never mind.

17 Would somebody count the pages and tell me how
18 many pages are in the total document, please?

19 MS. LANCASTER: I'll be happy to, Your Honor.

20 JUDGE STEINBERG: Well, that's called -- it's the
21 document entitled "request for stay" and it indicates that
22 it was filed with the Commission. Well, it's to the
23 Commission and the *date of the* pleading is August 6, 2002.

24 MS. LANCASTER: Your Honor, I believe it's more
25 than just the request for stay.

1 JUDGE STEINBERG: Okay. Well, then I m going to
2 be quiet and let somebody from the Bureau ident fy the whole
3 package because --

4 MR. EVANS: It looks like there might be one page
5 that's out of order.

6 JUDGE STEINBERG: Well, let them --

7 (Pause.)

8 MR. DeJESUS: Your Honor, let the record reflect,
9 it's a request for stay, application for the account 33 --

10 BY MR. DeJESUS:

11 Q Now do you recognize that?

12 JUDGE STEINBERG: Wait. Is that the -- wait a
13 sec, wait a sec, wait a sec. I have an application for
14 review, okay. Let me just start. Can't you just -- never
15 mind. The request for stay appears to be *six* pages long
16 with no certificate of service. Does everybody have six
17 pages of --

18 MR. EVANS: Yes.

19 JUDGE STEINBERG: -- of application for review?

20 MR. EVANS: Yes.

21 JUDGE STEINBERG: I mean of request for stay?

22 MR. EVANS: Yes.

23 JUDGE STEINBERG: So that's *six* pages.

24 MR. EVANS: Right.

25 JUDGE STEINBERG: Then we have application for

1 review and I have one, two, three, four, five, six pages
2 Then we start with page two again. Does everybody start
3 with page two again?

4 MR. HILL: I do, yes. I do.

5 JUDGE STEINBERG: So what is the page two?

6 MR. DeJESUS: That was part of the --

7 (Multiple voices.)

8 JUDGE STEINBERG: And the page behind application
9 for review is different from the page two behind page six of
10 the application for review.

11 MR. EVANS: I think it's the motion for stay.

12 JUDGE STEINBERG: Well, tell you what, why don't
13 you withdraw this, get it together the way it's supposed to
14 be and then you can --

15 MR. DeJESUS: I'll withdraw it.

16 JUDGE STEINBERG: -- redo it and if it's three
17 pleadings make it three exhibits. If it's two pleadings
18 make it two exhibits. And make sure there's a number on a
19 circle on every page on the bottom so that if you ask the
20 witness to look at page 12 and everybody's looking at the
21 same page 12.

22 MR. DeJESUS: Thank you, Your Honor.

23 JUDGE STEINBERG: so Exhibit 27 is not identified
24 at this time

25 BY MR. DeJESUS:

1 Q Now what individuals are primarily responsible for
2 making sure that Alee follows FCC rules and regulations?

3 A I would say that that is the Executive Committee
4 in particular.

5 Q Pardon me? Could you repeat that?

6 A I said I would say it's the Executive Committee
7 in particular, all partners but the Executive Committee in
8 particular.

9 Q Okay.

10 A All right.

11 Q Anyone in particular on the Executive Committee
12 that's responsible for that?

13 A I don't think there's any specific assignment of
14 one individual.

15 Q Now with reference to your compensation how are
16 you compensated for your work on the Executive Committee?

17 A From my initial election by the partners to the
18 Executive Committee through the majority of 1999, zero.
19 From about the last part of 1999 going forward it's based
20 upon an hourly rate that I, in turn, would have technically
21 earned within the time that I would have had devoted away
22 from my practice.

23 Q Okay. so, basically, your compensation commences
24 as of 1999?

25 A In 1999 there was an amount that was paid for

1 prior year's service, all right, and subsequent to that it's
2 based upon a rate that is similar to my normal rate at the
3 office.

4 Q Okay. So you say you were -- you said that you
5 were paid for prior service. What was the total amount that
6 you were paid for prior service?

7 A I don't recall the exact amount. It was
8 approximately \$40,000.

9 Q Okay. And was that based on an hourly total or
10 was that based just as a lump sum for the amount?

11 A In my profession we maintain hours and I had
12 maintained my hours involved with the organization and used
13 a significantly discounted rate to apply to it.

14 Q Okay. What is your hourly rate?

15 A My hourly rate varies depending upon the services
16 that I render. Today it's \$135 an hour up to \$180 an hour.

17 Q Okay. And when you were getting paid for the the
18 lump sum for 1999 what was your hourly rate then?

19 A That varied, also. From 1988 where I was down at
20 maybe \$50 an hour to the rate in '99, which I don't recall.

21 Q Okay. So after 1999 did you have a fixed rate
22 that you charged?

23 A After 1999, yes, sir.

24 Q And what rate was that?

25 A Currently I'm being compensated at \$150 an hour.

1 Q Now what was -- going back to your initial
2 investment --

3 JUDGE STEINBERG: Let me interrupt.

4 MR. DeJESUS: Yes.

5 JUDGE STEINBERG: I think and at least I have in
6 my notes that Mr. Jones that Mr. Jones said from the time
7 that the Executive Committee was formed until sometime in
8 '99 you received no compensation.

9 THE WITNESS: No compensation,

10 JUDGE STEINBERG: Okay. So what you were talking
11 about being paid for prior service you were paid for the
12 service from '88 to '99 but paid for that --

13 THE WITNESS: Yes.

14 JUDGE STEINBERG: -- later?

15 THE WITNESS: Yes. Towards the end of '99. I'm
16 sorry.

17 JUDGE STEINBERG: Okay. Now I'm not confused
18 anymore. Thank you.

19 BY MR. DeJESUS:

20 Q Now what was your total investment initially in
21 the partnership?

22 A I believe that the partnership that I'm involved
23 in contributed approximately \$25,000 initially.

24 Q When you say the partnership you're involved in,
25 I'm interested specifically in the amount that you

1 contributed, your out of pocket. What did you spend?

2 A At that time I was a one fifth owner of that
3 partnership and I contributed one fifth of that total
4 amount.

5 Q So it would be \$5,000?

6 A \$5,000.

7 Q Okay. Now given that, obviously, did you
8 participate in the capital calls?

9 A I believe I made all of them.

10 Q Okay. Now when you say you believe you made all
11 the capital calls is it safe to assume that you would
12 determine what the capital calls should be --

13 A No.

14 Q -- for Alee?

15 A I did not.

16 Q Okay. Would you make the recommendation to the
17 Executive Committee as to what the capital call amount
18 should be?

19 A I believe that it was a joint decision by the
20 Executive Committee based upon anticipated costs or existing
21 costs that we were incurring at the time.

22 Q Okay. Understanding that, when you say you
23 believe it was a joint decision, generally whose
24 responsibility was it to take these types of matters to the
25 Executive Committee?

1 A The Executive Committee was fully aware of the
2 costs we were incurring at the time.

3 Q Okay.

4 A I would be receiving the invoices and make them
5 aware of those items, yes.

6 Q Okay. So you would be the designated I guess
7 numbers person within the Executive Committee?

8 A I would say that that's a safe --

9 Q Okay.

10 A -- comment.

11 Q So, basically, would it be your recommendation
12 after reviewing all the financial data before you that there
13 wasn't sufficient amounts of money and, therefore, a capital
14 call was necessary?

15 A I would make the Executive Committee aware of the
16 invoices that were outstanding and/or anticipated and we
17 came to the conclusion that a capital call was necessary.

18 Q Okay. Now how many capital calls did you have
19 after the Executive Committee started -- took over?

20 A I believe there were a total of 14 capital calls
21 and I don't recall whether the first one was handled by Mr.
22 Kane or not. We needed some initial seed money to, in turn,
23 get into the partnership and that first capital call was
24 determine at the first partnership meeting.

25 Q So but it's safe to assume that after the first

one the rest of them were done by the Executive Committee
2 that you were a part of with Mr. Bernstein. Forgive me if I
3 get -- is it Becky --

4 A Becky Jo Clark

5 Q Becky Jo

6 A I would say safely after we took control of the
7 partnership in January of 1990 the Executive Committee
8 evaluated and determined what the appropriate capital call
9 should be.

10 Q Okay. And did you meet your capital call
11 commitment?

12 A I believe I met all of my commitments

13 Q Okay. Now I understand there have been quarterly
14 distributions?

15 A There have been distributions, not quarterly

16 Q Okay. When did the distributions begin?

17 A Distributions began approximately September of
18 1999

19 Q And how many distributions have you had since
20 then?

21 A That was the first one. There were others that
22 occurred. I don't recall the exact dates. I tried from
23 that point forward or after the first quarter of 2000 to
24 make them on a quarterly basis so that everybody would have
25 sufficient funds to be able to pay their tax estimates.

1 Q Okay. Now when the first distribution --

2 JUDGE STEINBERG: After the first quarter of what?

3 2000?

4 THE WITNESS: After the first quarter of 2000,

5 yes

6 BY MR. DeJESUS:

7 Q Now, obviously, you received a distribution as
8 well , correct?

9 A Yes, sir.

10 Q Okay. What was the amount you received, the very
11 first one?

12 A Well, Northeast Cellular received a distribution
13 of a little more than 10 percent, which is what our
14 ownership represents, of the total distribution which I
15 believe was \$500,000. So he would have received
16 approximately \$5,000.

17 Q Okay. Northeast would have received \$50,000?

18 A Northeast would have received that.

19 Q And what would have been your share of that?

20 A At that point my percentage I believe in Northeast
21 Cellular had increased to approximately 24 percent so I
22 would have received about 24 percent of the \$50,000.

23 Q And that represents what? I'm testing your math
24 skills here.

25 A Well, I have my calculator on me if you need me

1 to. Well, twenty five percent would be probably around
2 \$12,000.

3 Q Okay. And have the other distributions remained
4 fairly consistent?

5 A No.

6 Q Okay. Okay. Do you recall total what Northeast
7 has received after the initial \$50,000?

8 A What Northeast Cellular has received?

9 Q Yes.

10 A I'd have to calculate that, sir. I don't know off
11 the top of my head

12 Q Okay. Let's start with the year 2000. Obviously,
13 since you've clearly prepared your own tax what did you list
14 on your tax form as to the amount that you received from --

15 A It's not necessary to be disclosed to the Internal
16 Revenue Service.

17 Q Pardon me?

18 A I said it's not necessary to be disclosed to the
19 Internal Revenue Service.

20 Q Okay. Okay. And why is that?

21 A It's just not a requirement.

22 Q Okay.

23 A You're taxed based upon income.

24 Q Okay. So can you tell us at all what you believe
25 you received for 2000 from Alee?

1 A I believe that the distributions during the year
2 2000 approximated \$1 million.

3 Q \$1 million. And that's what Northeast would have
4 received?

5 A No. That's the total distributions from Alee
6 Cellular would have been --

7 Q Okay

8 A -- approximately.

9 Q And is that to say that for the year 2000 you
10 would have received -- Northeast would have received 10
11 percent of that?

12 A Northeast Cellular would have received 10 percent
13 of that number, yes.

14 Q Okay. Now for the year 2001 could you tell us --

15 JUDGE STEINBERG: Now let's just **follow** through.
16 Northeast got 10 percent of the \$1 million and you got 24
17 percent of their 10 percent.

18 THE WITNESS: Correct.

19 BY MR. DeJESUS:

20 Q Okay. Now for the year 2001 do you recall what
21 Northeast received then?

22 A In the year 2001 I believe distributions
23 approximated \$1.1 million.

24 Q Okay.

25 JUDGE STEINBERG: Okay. That's the distributions